

SENATE BILL No. 334

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-34; IC 35-52-16-23.5.

Synopsis: Abortion prohibition based on sex or disability. Prohibits a person from performing an abortion if the person knows that the pregnant woman is seeking the abortion because of: (1) the sex of the fetus; or (2) a diagnosis or potential diagnosis of the fetus having Down syndrome or any other disability. Makes it a Level 5 felony if a person knowingly or intentionally performs a sex selective abortion or an abortion conducted because of a diagnosis of Down syndrome or any other disability. Provides for civil relief.

Effective: July 1, 2015.

Holdman

January 8, 2015, read first time and referred to Committee on Health & Provider Services.



First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 334

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-18.5 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2015]: **Sec. 18.5. "Any other disability", for**
- 4 **purposes of IC 16-34, has the meaning set forth in IC 16-34-3-1.**
- 5 SECTION 2. IC 16-18-2-100.5 IS ADDED TO THE INDIANA
- 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE JULY 1, 2015]: **Sec. 100.5. "Down syndrome", for**
- 8 **purposes of IC 16-34, has the meaning set forth in IC 16-34-3-2.**
- 9 SECTION 3. IC 16-18-2-328.6 IS ADDED TO THE INDIANA
- 10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 11 [EFFECTIVE JULY 1, 2015]: **Sec. 328.6. "Sex selective abortion",**
- 12 **for purposes of IC 16-34-3, has the meaning set forth in**
- 13 **IC 16-34-3-3.**
- 14 SECTION 4. IC 16-34-2-1, AS AMENDED BY P.L.136-2013,
- 15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 16 JULY 1, 2015]: Sec. 1. (a) Abortion shall in all instances be a criminal



act, except when performed under the following circumstances:

(1) **Except as prohibited in IC 16-34-3**, during the first trimester of pregnancy for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) the abortion is performed by the physician;

(B) the woman submitting to the abortion has filed her consent with her physician. However, if in the judgment of the physician the abortion is necessary to preserve the life of the woman, her consent is not required; and

(C) the woman submitting to the abortion has filed with her physician the written consent of her parent or legal guardian if required under section 4 of this chapter.

However, an abortion inducing drug may not be dispensed, prescribed, administered, or otherwise given to a pregnant woman after nine (9) weeks of postfertilization age unless the Food and Drug Administration has approved the abortion inducing drug to be used for abortions later than nine (9) weeks of postfertilization age. A physician shall examine a pregnant woman in person before prescribing or dispensing an abortion inducing drug. As used in this subdivision, "in person" does not include the use of telehealth or telemedicine services.

(2) **Except as prohibited in IC 16-34-3**, for an abortion performed by a surgical procedure, after the first trimester of pregnancy and before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion during the first trimester are present and adhered to; and

(B) the abortion is performed in a hospital or ambulatory outpatient surgical center (as defined in IC 16-18-2-14).

(3) **Except as provided in subsection (b) or as prohibited in IC 16-34-3**, and for an abortion performed by a surgical procedure, at the earlier of viability of the fetus or twenty (20) weeks of postfertilization age and any time after, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion before the earlier of viability of the fetus or twenty

(20) weeks of postfertilization age are present and adhered to;

(B) the abortion is performed in compliance with section 3 of



1 this chapter; and

2 (C) before the abortion the attending physician shall certify in
3 writing to the hospital in which the abortion is to be
4 performed, that in the attending physician's professional,
5 medical judgment, after proper examination and review of the
6 woman's history, the abortion is necessary to prevent a
7 substantial permanent impairment of the life or physical health
8 of the pregnant woman. All facts and reasons supporting the
9 certification shall be set forth by the physician in writing and
10 attached to the certificate.

11 (b) A person may not knowingly or intentionally perform a partial
12 birth abortion unless a physician reasonably believes that:

13 (1) performing the partial birth abortion is necessary to save the
14 mother's life; and

15 (2) no other medical procedure is sufficient to save the mother's
16 life.

17 SECTION 5. IC 16-34-2-1.1, AS AMENDED BY P.L.98-2014,
18 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2015]: Sec. 1.1. (a) An abortion shall not be performed except
20 with the voluntary and informed consent of the pregnant woman upon
21 whom the abortion is to be performed. Except in the case of a medical
22 emergency, consent to an abortion is voluntary and informed only if the
23 following conditions are met:

24 (1) At least eighteen (18) hours before the abortion and in the
25 presence of the pregnant woman, the physician who is to perform
26 the abortion, the referring physician or a physician assistant (as
27 defined in IC 25-27.5-2-10), an advanced practice nurse (as
28 defined in IC 25-23-1-1(b)), or a certified nurse midwife (as
29 defined in IC 34-18-2-6.5) to whom the responsibility has been
30 delegated by the physician who is to perform the abortion or the
31 referring physician has informed the pregnant woman orally and
32 in writing of the following:

33 (A) The name of the physician performing the abortion, the
34 physician's medical license number, and an emergency
35 telephone number where the physician or the physician's
36 designee may be contacted on a twenty-four (24) hour a day,
37 seven (7) day a week basis.

38 (B) That follow-up care by the physician or the physician's
39 designee (if the designee is licensed under IC 25-22.5) and is
40 available on an appropriate and timely basis when clinically
41 necessary.

42 (C) The nature of the proposed procedure or information



concerning the abortion inducing drug.

(D) Objective scientific information of the risks of and alternatives to the procedure or the use of an abortion inducing drug, including:

- (i) the risk of infection and hemorrhage;
- (ii) the potential danger to a subsequent pregnancy; and
- (iii) the potential danger of infertility.

(E) That human physical life begins when a human ovum is fertilized by a human sperm.

(F) The probable gestational age of the fetus at the time the abortion is to be performed, including:

- (i) a picture of a fetus;
- (ii) the dimensions of a fetus; and
- (iii) relevant information on the potential survival of an unborn fetus;

at this stage of development.

(G) That objective scientific information shows that a fetus can feel pain at or before twenty (20) weeks of postfertilization age.

(H) The medical risks associated with carrying the fetus to term.

(I) The availability of fetal ultrasound imaging and auscultation of fetal heart tone services to enable the pregnant woman to view the image and hear the heartbeat of the fetus and how to obtain access to these services.

(J) That the pregnancy of a child less than fifteen (15) years of age may constitute child abuse under Indiana law if the act included an adult and must be reported to the department of child services or the local law enforcement agency under IC 31-33-5.

(K) That Indiana does not allow a fetus to be aborted solely because of the fetus's sex or diagnosis or potential diagnosis of the fetus having Down syndrome or any other disability.

(2) At least eighteen (18) hours before the abortion, the pregnant woman will be informed orally and in writing of the following:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care from the county office of the division of family resources.

(B) That the father of the unborn fetus is legally required to assist in the support of the child. In the case of rape, the information required under this clause may be omitted.



- 1 (C) That adoption alternatives are available and that adoptive
- 2 parents may legally pay the costs of prenatal care, childbirth,
- 3 and neonatal care.
- 4 (D) That there are physical risks to the pregnant woman in
- 5 having an abortion, both during the abortion procedure and
- 6 after.
- 7 (E) That Indiana has enacted the safe haven law under
- 8 IC 31-34-2.5.
- 9 (F) The:
- 10 (i) Internet web site address of the state department of
- 11 health's web site; and
- 12 (ii) description of the information that will be provided on
- 13 the web site and that are;
- 14 described in section 1.5 of this chapter.
- 15 (G) For the facility in which the abortion is to be performed,
- 16 an emergency telephone number that is available and
- 17 answered on a twenty-four (24) hour a day, seven (7) day a
- 18 week basis.
- 19 (3) The pregnant woman certifies in writing, on a form developed
- 20 by the state department, before the abortion is performed, that:
- 21 (A) the information required by subdivisions (1) and (2) has
- 22 been provided to the pregnant woman;
- 23 (B) the pregnant woman has been offered by the provider the
- 24 opportunity to view the fetal ultrasound imaging and hear the
- 25 auscultation of the fetal heart tone if the fetal heart tone is
- 26 audible and that the woman has:
- 27 (i) viewed or refused to view the offered fetal ultrasound
- 28 imaging; and
- 29 (ii) listened to or refused to listen to the offered auscultation
- 30 of the fetal heart tone if the fetal heart tone is audible; and
- 31 (C) the pregnant woman has been given a written copy of the
- 32 printed materials described in section 1.5 of this chapter.
- 33 (4) At least eighteen (18) hours before the abortion and in the
- 34 presence of the pregnant woman, the physician who is to perform
- 35 the abortion, the referring physician or a physician assistant (as
- 36 defined in IC 25-27.5-2-10), an advanced practice nurse (as
- 37 defined in IC 25-23-1-1(b)), or a midwife (as defined in
- 38 IC 34-18-2-19) to whom the responsibility has been delegated by
- 39 the physician who is to perform the abortion or the referring
- 40 physician has provided the pregnant woman with a color copy of
- 41 the informed consent brochure described in section 1.5 of this
- 42 chapter by printing the informed consent brochure from the state



department's Internet web site and including the following information on the back cover of the brochure:

(A) The name of the physician performing the abortion and the physician's medical license number.

(B) An emergency telephone number where the physician or the physician's designee may be contacted twenty-four (24) hours a day, seven (7) days a week.

(C) A statement that follow-up care by the physician or the physician's designee who is licensed under IC 25-22.5 is available on an appropriate and timely basis when clinically necessary.

(b) Before an abortion is performed, the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible unless the pregnant woman certifies in writing, on a form developed by the state department, before the abortion is performed, that the pregnant woman:

(1) does not want to view the fetal ultrasound imaging; and

(2) does not want to listen to the auscultation of the fetal heart tone if the fetal heart tone is audible.

SECTION 6. IC 16-34-2-5, AS AMENDED BY P.L.6-2012, SECTION 120, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Every medical facility where abortions may be performed shall be supplied with forms drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. Such forms shall include, among other things, the following:

(1) The age of the woman who is aborted.

(2) The place where the abortion is performed.

(3) The full name and address of the physicians performing the abortion.

(4) The name of the father if known.

(5) The age of the father, or the approximate age of the father if the father's age is unknown.

(6) The postfertilization age of the fetus, the manner in which the postfertilization age was determined, **whether the fetus has been diagnosed with or has a potential diagnosis of having Down syndrome or any other disability**, and, if after the earlier of the time the fetus obtains viability or the time the postfertilization age



of the fetus is at least twenty (20) weeks, the medical reason for the abortion.

(7) The medical procedure employed to administer the abortion and, if the medical procedure performed on a fetus who is viable or has a postfertilization age of at least twenty (20) weeks:

(A) whether the method of abortion used was a method that, in the reasonable judgment of a physician, would provide the best opportunity for the fetus to survive; and

(B) the basis for the determination that the pregnant woman had a condition described in this chapter that required the abortion to avert the death of or serious impairment to the pregnant woman.

(8) The mother's obstetrical history, including dates of other abortions, if any.

(9) The results of pathological examinations if performed.

(10) Information as to whether the fetus was delivered alive.

(11) Records of all maternal deaths occurring within the health facility where the abortion was performed.

(12) The date of the pregnancy termination.

(13) The date the form was received by the state department.

(b) The form provided for in subsection (a) shall be completed by the physician performing the abortion and shall be transmitted to the state department not later than July 30 for each abortion performed in the first six (6) months of that year and not later than January 30 for each abortion performed for the last six (6) months of the preceding year. However, if an abortion is performed on a female who is less than fourteen (14) years of age, the physician performing the abortion shall transmit the form to the state department of health and the department of child services within three (3) days after the abortion is performed.

(c) The dates in subsection (a)(12) and (a)(13) may not be redacted for any use of the form.

(d) Each failure to file the completed form on time as required under this section is a Class B misdemeanor.

(e) Not later than June 30 of each year, the state department shall compile a public report providing the following:

(1) Statistics for the previous calendar year from the information submitted under this section.

(2) Statistics for previous calendar years compiled by the state department under this subsection, with updated information for the calendar year that was submitted to the state department after the compilation of the statistics.

The state department shall ensure that no identifying information of a



pregnant woman is contained in the report.

SECTION 7. IC 16-34-3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 3. Sex Selective and Disability Abortion Ban

Sec. 1. As used in this chapter, "any other disability" means any disease, defect, or disorder that is genetically inherited. The term includes the following:

- (1) A physical disability.
- (2) A mental disability or retardation.
- (3) A physical disfigurement.
- (4) Scoliosis.
- (5) Dwarfism.
- (6) Down syndrome.
- (7) Albinism.
- (8) Amelia.
- (9) A physical or mental disease.

Sec. 2. As used in this chapter, "Down syndrome" means a chromosomal disorder associated with an extra chromosome 21 or an effective trisomy for chromosome 21.

Sec. 3. As used in this chapter, "sex selective abortion" means an abortion that is performed solely because of the sex of the fetus.

Sec. 4. (a) A person may not intentionally perform or attempt to perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking a sex selective abortion.

(b) A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking a sex selective abortion.

(c) This section is severable as specified in IC 1-1-1-8.

Sec. 5. (a) A person may not intentionally perform or attempt to perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with Down syndrome or a potential for Down syndrome.

(b) A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with Down syndrome or a potential for Down syndrome.



(c) This section is severable as specified in IC 1-1-1-8.

Sec. 6. (a) A person may not intentionally perform or attempt to perform an abortion before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with any other disability or a potential for any other disability.

(b) A person may not intentionally perform or attempt to perform an abortion after viability of the fetus or twenty (20) weeks of postfertilization age if the person knows that the pregnant woman is seeking the abortion solely because the fetus has been diagnosed with any other disability or a potential for any other disability.

(c) This section is severable as specified in IC 1-1-1-8.

Sec. 7. (a) A person who knowingly or intentionally performs an abortion in violation of this chapter commits a Level 5 felony.

(b) In addition to the criminal penalty under subsection (a), a person who violates this chapter may be subject to:

(1) disciplinary sanctions under IC 25-1-9; and

(2) civil liability for wrongful death and medical malpractice.

(c) A pregnant woman upon whom an abortion is performed in violation of this chapter may not be prosecuted for violating or conspiring to violate this chapter.

Sec. 8. Any records that are made as a result of proceedings conducted under section 7 of this chapter are confidential.

SECTION 8. IC 35-52-16-23.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 23.5. IC 16-34-3-7 defines a crime concerning abortion.

